

# No Standing News

Since we have no standing, we stand with those left standing.

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## THE BRANSON "POISON PILL"

By Phil (People Helping Individuals Learn)

While the Chamber is busy handing out tickets to Branson, maps to Branson and advertising Branson on big expensive highway billboards it is, ironically, Branson that has provided the means for the destruction of the Chamber's precious tourist tax. On May 27, 1997, the Missouri Supreme Court decided in Case No. 79640, Tillis v. City of Branson that Branson's tourist tax was an "unconstitutional special law" and so the Supreme Court reversed (voided) it. The Revised Statutes of Missouri 94.830, which authorized the same "special" tourist tax for Rolla contains the same flaw that struck down the Branson tax. All that remains is for some well-informed tourist to file a challenge, and Rolla's much too "special" tourist tax is dead meat. \*[1. Text of Tillis vs. Branson decision.](#) >

NSN readers will remember Issue #30, "What Buz Harvey is Afraid Of" which examined the reasons why Rolla's 1993 ordinance, which enacted the tourist tax - or Lodging Tax as it is called in the city ordinance - is illegal just because of the way the ordinance is written. The local tourist tax ordinance is, as explained in that article, illegal because the limited permission of Rolla voters was deliberately corrupted in the ordinance to permit the tax to be spent, not just on tourism promotion, but also for a laundry list of unrelated RCDC/Chamber pork projects.

Voters did not give permission for any of that. The ordinance is still illegal but since May 1997, when the Branson twin of our "special" state law was struck down, the Rolla Lodging tax statute has been hanging by one thin, unconstitutional thread. [<url #2-NSN #30>](#) [<url #3 Rolla Lodging Tax Ordinance>](#)

How the "Poison Pill" Works. The Branson tourist tax statute was found by the Supreme Court to be a "special" tax and the Constitution forbids the General Assembly to pass any bills that are "special." Special laws are those that are designed so narrowly that they apply to only one class or one entity and exclude all others from the benefits or restrictions of the law. Branson's "special" legislation allowed only a fourth class city in a third class county with a population of between three and five thousand having five thousand motels rooms inside the city and having a common border with the state of Arkansas to have a tourist tax. You have to admit that's real, real special. No other city in the state could meet such criteria. Rolla's "special" legislation (RSMo 94.830) allowed the same local vote for the same tourist tax as Branson. Rolla's "special" statute says: only a "third class city in a county of the third classification which contains a state university whose primary mission is engineering studies and technical research may impose a tax on...(tourist lodgings)". That's also real, real special. Much too special to pass the Supreme Court test that was applied to Branson's special statute. There are two other engineering schools in the state in addition to UMR but at the other two, engineering studies and technical research is not the primary mission and the other is not a state school. Only here, at UMR are engineering studies and technical research the primary

mission. To remove all doubt, "(Rolla)" is contained in the statute heading just in case you couldn't guess for whom the "special" legislative favor was being done. <url #4 RSMo 94.830>

"Supremus Interruptus". In case you're wondering why the Supreme Court didn't rule on Rolla's tax and void it along with the Branson statute, the answer is simple. Courts only answer the question they're asked and they weren't asked about the constitutionality of Rolla's tax - just the Branson tax. So, you ask, why doesn't the General Assembly do something? After all, they started the whole mess by passing those "special" laws. The answer to that is more complex but what it comes to is this. The state won't clean up our problems because they just don't have to and we can't make them. Get used to the idea that the state does not exist to solve Rolla's problems - not even when they create them. The General Assembly could repeal the several unconstitutional "special" tourist tax laws they passed and someday they may remember to put them on a repeal list - or not.

So now what happens? Two years ago, when the Supreme Court made their ruling on the Branson tax, the simple remedy would have been for the Rolla City Council to repeal the tourist tax ordinance, which they passed to enact the tax after Rolla voters approved it in 1993. (They did that sort of thing, routinely back then because John Butz hadn't yet arrived to tell them how "comfortable" he is not passing enacting legislation for taxes.) At that time, the council could have simply suspended collection of the suspect tax and put the issue back on the ballot at the next regular election under the authority of a later and constitutional state statute permitting practically anyone to take a local vote on a tourist tax. That is what they should have done by at least June 1997, right after the Supreme Court announced the Branson decision - but they didn't. The re-voted tourist tax would then be restored, but then it would be quite legal. That is, it would be restored IF the voters approved it a

second time - therein lies the snag. The Rolla Area Chamber of Commerce, which is ironically, nothing more than a Branson marketing bureau, risks having their rice bowl broken if voters are asked to approve this tax again because the second time the voters might say NO.

Feed Us More Boloney Please. We're not convinced they have that much to worry about. Rolla voters seem to have developed the habit of swallowing any amount of establishment boloney totally unadorned by facts. They then trot obediently to the polls to have their pockets picked. When unpleasant facts emerge later and the self-serving sloganeering and vague half-truths are exposed, Rolla voters wake up to discover they have been had - again. "Trust us, we'll tell you the details later" has become the magic campaign formula for taxes for tourists, jails and recreation centers. It's been so successful that the Rolla Board of Education has announced that when they try the school bond issue again, they will emulate the successful technique of the city and the county. We hope that doesn't mean that they too plan to use half-truths and the "Trust us we'll tell you the real story later," method.

On the other hand, voters can be tricky and they sometimes revolt without warning. The Chamber must fear that voter revolt is a possibility. Since October when the half-cent sales tax for the county jail kicked in, (purchases in Rolla now carry one of the highest sales taxes in the state - 7.725% on every dollar) the formerly docile voters might resist approving the Chamber's tourist tax a second time. If that happened, what would the Chamber do to replace the \$180,000 a year life-style they have become accustomed to? Even worse, what if the voters passed the tax again, but this time the council wised up and doled out the tourist tax to them only based on provable results? Warrensburg, for instance, passed a tourist tax but their city council controls every dime of it because they were smart enough not to sign a blank check contract with their

Chamber to pursue vague "meet and greet" goals. We still marvel at the hypocrisy of the Rolla Chamber. This is an organization that promotes free enterprise and resists any form of government interference and control of businesses but they didn't hesitate a second when they found a way to go on the public dole themselves, just like the "welfare cheats" they often complain about.

What Did They Know and When Did They Know It? With characteristic venality, the Chamber of Commerce will not stand up, admit that the tax is fatally flawed and ask the council to resubmit it to the voters. They are instead, keeping their heads down and hoping no one will notice that they are paying off their \$290,000 building debt and enjoying their featherbedding salaries, travel and entertainment with ill-gotten gains. Frankly, we didn't expect better from them. The question we want answered is this, did John Beger tell the council about the Branson decision or not? If Beger did not inform his client very soon after May 1997, that they were imposing an unconstitutional tax for the Chamber's benefit and, if he did not warn them that they could be sued unless they voluntarily took steps to correct it, he violated several professional rules. He is paid quite well to keep the city informed of just this kind of risk. A good attorney advises his clients so that they stay OUT of court if at all possible. If Beger had no other way to find out about the Supreme Court decision - and he did - the city pays dues to the Missouri Municipal League, and they put out a notice on it. MML sent all member city attorneys a special MML City Attorney's Newsletter, No. 263 in June 1997, which told him all about it. However, if he did tell Butz or the mayor they may have decided to keep this from the council just they way they failed to tell them, and us, the full story about DNR's abatement order.

"So, Let Them Sue Us." This is a quote from Councilman Rothwell when NSN Editor, Robert Nash asked him in September how he could vote

for an illegal retroactive tax. It's not unusual to hear this sentiment expressed by some city officials. Barklage is another "Let them sue us" elected official. It is possible that Beger did tell them and "the end justifies the means" crowd just blew it off. How dare they take the attitude that they can commit any arrogant and careless act, expose the city to litigation and leave us to pay the bills and bear the consequences! In either case, there has not been a word out of any of them about this for over two years. Rolla citizens are, once again, being poorly served because sooner or later there will be repercussions over this tax. The more time and tax money that has passed since the Supreme Court decision, the messier and more expensive the final solution will be. Rolla taxpayers will, directly or indirectly, once again wind up paying for the inadequacies of greedy little men.

A question before the court at this late date on the constitutionality of Rolla's tax will necessarily include questions about who is responsible for refunding the unconstitutional taxes collected since May 1997, and possibly even since 1993. Motel owners presumably have registration records on the guests who paid the tax but motel owners weren't responsible for this mess and they have nothing to do with cleaning it up. The City and the Chamber may not only have to come up with over three-quarters of a million dollars for reimbursement, but they may also have pay the expenses of returning the tax to the motel guests who paid it. The longer the city council allows the tax to be collected the more expensive the payback will be. The clock has been ticking for at least two years - and maybe as long as six.

We're sure John Butz will take pains to avoid putting this on the council agenda. But when it blows up - and it will sooner or later - we expect to hear Beger tell the council that in his "legal" opinion this is another of his "gray areas." We already know what the "So, let them sue us" boys on the council will say. When the lid does blow off this can of Chamber worms, should more of

our tax money be wasted paying Beger to defend another Chamber of Tourism bailout and the failure of our elected officials to act responsibly? The council should limit the damage now by repealing the local tourist tax ordinance. Then let the Chamber solve the financial problems they created when they plotted to build their little tourism empire with public tax money. If anyone pays lawyers to salvage the tourist tax the Chamber should pay. They're the only ones who have ever benefited from the money that is being squeezed out of tourists.

\*<url #1. to text of Tillis vs. Branson case:  
<http://www.osca.state.mo.us/Courts/PubOpinions.nsf/0f87ea4ac0ad4c0186256405005d3b8e/8321b5c7262f006b862564a4004b85df?OpenDocument>

<url #2-NSN #30>  
[http://www.rollanet.org/~rwnash/NSN\\_1\\_30.html](http://www.rollanet.org/~rwnash/NSN_1_30.html)

<url #3 Rolla Lodging Tax ordinance>  
<http://www.rollanet.org/~muncourt/Ordinances/c37s55.html>

<url #4 RSMo 94.830>  
<http://www.moga.state.mo.us/statutes/c000-099/0940830.htm>

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